

2 SUPREME COURT OF THE STATE OF NEW YORK
3 COUNTY OF NEW YORK: CIVIL TERM : PART 35

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5 UNIFORMED FIRE OFFICERS ASSOCIATION;
6 UNIFORMED FIREFIGHTERS ASSOCIATION OF
7 GREATER NEW YORK; CORRECTION OFFICERS'
8 BENEVOLENT ASSOCIATION OF THE CITY OF NEW
9 YORK, INC.; POLICE BENEVOLENT ASSOCIATION
10 OF THE CITY OF NEW YORK, INC.; SERGEANTS
11 BENEVOLENT ASSOCIATION; LIEUTENANTS
12 BENEVOLENT ASSOCIATION; CAPTAINS
13 ENDOWMENT ASSOCIATION; AND DETECTIVES'
14 ENDOWMENT ASSOCIATION,

15 Petitioners/Plaintiffs,

16 -against-

Index No.
154982/2020

17 BILL DE BLASIO, IN HIS OFFICIAL CAPACITY
18 AS MAYOR OF THE CITY OF NEW YORK; THE
19 CITY OF NEW YORK; FIRE DEPARTMENT OF THE
20 CITY OF NEW YORK; DANIEL A. NIGRO, IN HIS
21 OFFICIAL CAPACITY AS THE COMMISSIONER OF
22 THE FIRE DEPARTMENT OF THE CITY OF NEW
23 YORK; NEW YORK CITY DEPARTMENT OF
24 CORRECTION; CYNTHIA BRANN, IN HER
25 OFFICIAL CAPACITY AS THE COMMISSIONER OF
26 THE NEW YORK CITY DEPARTMENT OF
CORRECTION; DERMOT F. SHEA, IN HIS
OFFICIAL CAPACITY AS THE COMMISSIONER OF
THE NEW YORK CITY POLICE DEPARTMENT; THE
NEW YORK CITY POLICE DEPARTMENT;
FREDERICK DAVIE, IN HIS OFFICIAL CAPACITY
AS THE CHAIR OF THE CIVILIAN COMPLAINT
REVIEW BOARD; AND THE CIVILIAN COMPLAINT
REVIEW BOARD,

Respondents/Defendants. **MOTION VIA SKYPE**

21 -----X
22 OFFICIAL ADDRESS: 60 Centre Street
23 New York, New York 10007
24 July 15, 2020

25 B E F O R E: (Via Skype)

26 HON. CAROL EDMEAD, Justice of the Supreme Court

(Appearances on the following page.)

A P P E A R A N C E S: (Via Skype)

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A L S O P R E S E N T: (Via Skype)

GRACE ANN C. LAZARO, Law Secretary

MICHAEL W. CAVARRETTA, Law Secretary

SAMMER OSMAN, Court Clerk

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LAURA L. LUDOVICO
Senior Court Reporter
60 Centre Street - Room 420

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New York, New York 10007

1 Proceedings

2 THE COURT: Mr. Osman?

3 THE CLERK: Yes, Your Honor.

4 THE COURT: Okay. All right. Mr. Osman, you are
5 there?

6 THE CLERK: Yes, Your Honor.

7 THE COURT: Okay. Let's get the law sectaries
8 and then let's get appearances.

9 THE CLERK: They are all here as well, Your
10 Honor.

11 THE COURT: Can we get appearances then?

12 MR. COLES: Your Honor, my name is Tony Coles,
13 counsel for the petitioners/plaintiffs from the Law Firm of
14 DLA Piper.

15 THE COURT: Excellent.

16 Next.

17 MR. COLES: My colleague is John Wray, W-R-A-Y,
18 also from DLA Piper.

19 THE COURT: Thank you.

20 Next.

21 MS. QUINN: Good morning, Your Honor.

22 Rebecca Quinn from the New York City Law
23 Department on behalf of the Defendants/Respondents.

24 THE COURT: Thank you.

25 Next.

26 MS. SAINT-FORT: Good morning, Your Honor.

Laura L. Ludovico, SCR

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2 Dominique Saint-Fort from the New York City Law Department,
3 also on behalf of the respondents.

4 THE COURT: You'll have to spell your last name,
5 please.

6 MS. SAINT-FORT: Sure. Saint Fort, S-A-I-N-T,
7 dash F-O-R-T, Saint-Fort.

8 THE COURT: Thank you. And you're for the
9 Defendants/Respondents as well, right?

10 MS. SAINT-FORT: Yes, Your Honor.

11 THE COURT: Anyone else?

12 Okay. Let's hear from counsel for
13 Plaintiffs/Petitioners.

14 If you are not speaking, please mute your mic so
15 we don't get echo. Thank you, all.

16 Now, Mr. Coles, Mr. Wray, first question is
17 directed to you. We understand that this arises from the
18 repeal of New York City Civil Rights Law § 50-a, I believe,
19 subparagraph one.

20 Why do you need this relief today?

21 MR. COLES: Your Honor, thank you very much.
22 That obviously is the core question for the proceeding
23 today.

24 The issue here is the repeal of 50-a did not also
25 repeal well-settled New York City laws regarding collective
26 bargaining, regarding due process, regarding contract law

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2 and regarding Article 78. The reason we need a TRO today,
3 it appears to be the City's position, is they simply want
4 to ignore the independent existence of the rights of the
5 petitioners and the plaintiffs in this case under settled
6 law to have certain review and certain scoping done of the
7 rule 50-a applications, who we have been told -- I've had a
8 number of conversations with the Law Department and we had
9 come close to having an agreement under which the release
10 of documents would tentatively or provisionally be put on
11 hold while this matter was briefed. We ultimately could
12 not reach an agreement on that.

13 My clients, who are the five police unions, the
14 two fire unions and the correction officers' unions, 65,000
15 approximately, law enforcement members, have been told that
16 as early as this week in the wake of the repeal of 50-a,
17 the City is on the verge of a hasty and rushed decision to
18 publish and promote on the internet the personnel records
19 of thousands of officers that contain -- and this is
20 critical -- nonfinal and unsubstantiated claims and
21 allegations. It is basically a document dump with no
22 individualized assessment for any determination as to
23 matters that are unproven or unfounded.

24 The --

25 MS. QUINN: I'm sorry, I have to -- I'm sorry,
26 Mr. Coles, to interrupt.

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2 THE COURT: Who's speaking, please?

3 MS. QUINN: I'm sorry, Your Honor. This is
4 Rebecca Quinn for the respondents.

5 THE COURT: Thank you. Go ahead.

6 MS. QUINN: Thank you so much.

7 I just have to let the Court know that this
8 matter has now been removed based on federal question
9 jurisdiction.

10 THE COURT: Well, if the matter has been removed,
11 all this Court is to see is the removal document and then
12 there is no more for us to say. However, the application
13 for a stay, will that be then immediately addressed by the
14 Federal Court?

15 MS. QUINN: Okay. Your Honor, can I forward
16 those papers to Mr. Osman?

17 THE COURT: You can upload it and eFile and then
18 you could attach it to Mr. Osman.

19 Will there be an interim stay being considered
20 immediately by the Federal Court?

21 MS. QUINN: Your Honor --

22 THE COURT: The question I have clearly is,
23 simply is, if, as the plaintiffs/petitioners point out,
24 there is the anticipatory disclosure of this information,
25 which could be as early as today. Will the interim stay be
26 before the Federal Court before there is any disclosure of

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2 this information?

3 MS. QUINN: I believe as long as it's before the
4 Court today, Your Honor, yes, that would be today before
5 the Court's conversation.

6 THE COURT: I understand, but you see what you
7 just said? "I believe it will be before the Court today."
8 There is a concern, of course, for the petitioners in this
9 case because that is a critical issue in their application
10 by Order to Show Cause. So if you can give an assurance
11 that there will be no disclosures related to the repeal of
12 New York City Civil Rights Law § 50-a(1) prior to the
13 matter getting before the Federal Court, we are done.

14 MS. QUINN: Okay. Can we endeavor to obtain
15 those assurances, Your Honor?

16 THE COURT: Well, the question I have is unless
17 and until that is done, it's open. You see what I'm
18 saying?

19 Or this Court can just fashion an order that says
20 that the Court has been made aware that -- Grace, this is
21 to you.

22 MS. LAZARO: Yes, Your Honor.

23 THE COURT: The Court has been made aware that
24 this matter has been remanded to the Federal Court. The
25 Court's concern, of course, is that pending the matter
26 being heard before the Federal Court, that the issue of the

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interim stay is critical and I'm inclined to grant an interim stay pending this matter being before the Federal Court. I just don't want there to be a gap.

MS. QUINN: I understand, Your Honor.

THE COURT: Do you have a problem with the Court fashioning that order?

MS. QUINN: As long -- if I'm understanding Your Honor correctly, the stay would be pending the Federal Court hearing the application for the TRO.

THE COURT: Absolutely.

MS. QUINN: Okay. Yes, that's -- I understand that, Your Honor, and thank you, that's -- respondents agree to that.

THE COURT: So, counsel for plaintiffs/petitioners, I will fashion a short order that says just what I have said and you have an interim stay pending the issue of the stay being brought before the Federal Court with this remand, do you understand?

MR. COLES: Your Honor, thank you very much and thank you very much for raising that important issue.

And I don't know whether or not we'll see you again on this case, but thank you this morning for this time. If we do, I look forward to that in the future.

THE COURT: Let me say this finally. I will do a short order that says exactly what I've said. It will be

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signed immediately and I expect immediately to see the transfer order so, you know, I'm working with a full picture. Okay, everyone?

That is directed to Ms. Quinn and Ms. Saint Fort, okay?

MS. QUINN: Yes, Your Honor. Thank you.

THE COURT: All right.

MR. COLES: Thank you, Your Honor.

THE COURT: I'll do that right now. Everyone, good luck and stay well.

MR. COLES: Thank you.

(WHEREUPON, court is recessed and the case adjourned.)

(WHEREUPON, the case was recalled.)

THE COURT: Okay. Mr. Osman, who is here?

THE CLERK: Yes, Your Honor. We have Ms. Quinn, we have Ms. Saint-Fort, we also have Mr. Coles, who is appearing by phone.

THE COURT: Okay, and the reporter is on?

THE CLERK: Yes, Your Honor.

THE COURT: So I've received the e-mail from, I believe it's Ms. Quinn, at least Ms. Quinn, it may also be Ms. Saint-Fort, that indicates that you believe it's inappropriate for the Court to -- first of all, you're not

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2 consenting to the interim stay, which had been discussed
3 when we were on the call earlier, but your position is that
4 the Court has no authority to enter a stay pending the
5 issue being before the Federal Court?

6 MS. QUINN: That's correct, Your Honor.
7 Respectfully, I was made aware of that provision and just
8 wanted to notify the Court.

9 THE COURT: That provision says that the --
10 you're reading of that provision, which sentence makes it
11 clear to you that the stay would be inappropriate? Tell me
12 the sentence in that provision, please.

13 MS. QUINN: Okay. Just one second.

14 THE COURT: Yes.

15 (Brief pause in the record.)

16 MS. QUINN: The last sentence.

17 THE COURT: Says?

18 MS. QUINN: "And the State Court shall proceed no
19 further unless and until the case is remanded."

20 THE COURT: Okay. Now, Mr. Coles.

21 (Brief pause in the record.)

22 THE COURT: Is it Mr. Coles?

23 MR. COLES: Yes.

24 THE COURT: How do you --

25 MR. COLES: Yes, I'm here.

26 I don't have any problem with the order. I

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thought they consented to the order a half hour ago.

THE COURT: They have since withdrawn that based on an e-mail that was sent to the Court a few moments ago where they said that -- they attached the document of removal and they indicated that, according to the section from which she just read -- what are you citing from please so he's aware?

MR. COLES: I don't have the order in front of me. I'm sorry, I'm on the --

THE COURT: I understand. I'm asking Ms. Quinn, what are you citing from when you say: "And the Court shall....?" You're citing from -- I don't have it in front of me.

MS. QUINN: Yes, Your Honor, I'm sorry, I'll get it up. And I am remiss for not cc'ing Mr. Coles on the e-mail to Mr. Osman. It's 28 USC § 1446(d): Notice to Adverse Parties and State Court, and it reads: "Promptly after the filing of such Notice of Removal of a civil action, the Defendant or Defendants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such State Court, which shall effect the removal and the State Court shall proceed no further unless and until the case is remanded."

THE COURT: Let me ask you something. Have you filed that with the clerk of the Court?

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2 MS. QUINN: Yes, Your Honor.

3 THE COURT: With the clerk of the Court, not
4 Mr. Osman?

5 MS. QUINN: Yes, we've eFiled the Notice of
6 Removal.

7 THE COURT: To the clerk of the Court, not to
8 Mr. Osman?

9 MS. QUINN: Not to Mr. Osman, Your Honor.

10 THE COURT: Does it say to the clerk of the
11 Court?

12 MS. QUINN: We did -- we sent --

13 THE COURT: I'm sorry. Let me just be clear. To
14 the clerk of the Court is referring to the County Clerk?

15 MS. QUINN: We eFiled it on NYSCEF, Your Honor.

16 THE COURT: Mr. Osman, is that filing with the
17 clerk of the Court.

18 THE CLERK: I'm checking on that now, Your Honor.

19 THE COURT: I just want to be clear that we
20 dotted all the I's and crossed all the T's, that giving it
21 to Mr. Osman is not filing it with the clerk of the Court.

22 MS. QUINN: Yes, Your Honor, we filed on NYSCEF
23 and e-mailed a copy to Mr. Osman.

24 THE COURT: Mr. Osman is not the clerk of the
25 Court.

26 MS. QUINN: Understood. That was just a courtesy

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2 to him and to you, Your Honor.

3 THE COURT: So it's been filed now with the clerk
4 of the Court, you're saying, based on it being eFiled?

5 MS. QUINN: Yes, that's our position, Your Honor.

6 THE COURT: Mr. Osman, is that accurate?

7 THE CLERK: I'm checking on the protocol on
8 filing something with the clerk of the Court currently.
9 Just bear with me a moment.

10 THE COURT: Because if the language says "File
11 with the clerk of the Court," it means filed with the clerk
12 of the Court, not Mr. Osman, which is fine, I just want to
13 be clear that we're following the right guideline when you
14 say that that notice has been given to and filed with the
15 clerk of the Court.

16 Mr. Osman, you're looking it up, right?

17 THE CLERK: Yes, Your Honor. I'm reading it
18 currently.

19 THE COURT: Mr. Coles, while he's looking that
20 up, you understand that they're now saying that the interim
21 stay that the Court was going to issue would be
22 inappropriate since it's no longer -- the Court no longer
23 has jurisdiction?

24 MR. COLES: I have two answers to that, Your
25 Honor, without any of the documents, and they didn't even
26 give me the courtesy of sending the e-mail they sent to

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2 Mr. Osman.

3 THE COURT: By the way, stop one second. You
4 said: "I'm sorry, I was remiss in failing to give notice
5 to --

6 MS. QUINN: I meant the e-mail to Mr. Osman
7 advising him of the federal statute that we were just
8 discussing.

9 THE COURT: Well, let me ask you. How did you
10 already give notice to Mr. Coles of the removal?

11 MS. QUINN: Through the NYSCEF filing.

12 THE COURT: Okay.

13 MR. COLES: How do --

14 THE COURT: Go ahead, Mr. Coles.

15 MR. COLES: Okay. First of all, I think the fact
16 that they didn't send me the same e-mail they sent to
17 Mr. Osman should make this filing void, but two other
18 points.

19 First, your order was entered into before they
20 did this filing.

21 THE COURT: I so ordered. The transcript was so
22 ordered. Ms. Quinn --

23 MR. COLES: Yes, and that --

24 THE COURT: My transcript granted -- the interim
25 stay pending the action before the Federal Court was so
26 ordered before I got Notice of Removal.

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2 MS. QUINN: Yes, I understand that, Your Honor.

3 THE COURT: Well, let me be clear. This is
4 all -- I hate to be hypertechnical, but it really matters.
5 It matters because it is important. It may be that at the
6 end of the day it's of no moment because the
7 defendants/respondents had no intentions of, you know,
8 putting this out here before the issue gets before the
9 Federal Court, but just in an abundance of caution, belt
10 and suspenders, the order of this Court preceded your
11 Notice of Removal.

12 MS. QUINN: You mean by the --

13 THE COURT: Whether or not it was uploaded and
14 filed with the clerk of the Court and whether notice was
15 given to the parties, the order of this court preceded
16 that.

17 MS. QUINN: You mean by the transcript?

18 THE COURT: Which was so ordered.

19 MS. QUINN: Okay. Yes, I can't really -- I can't
20 really disagree. I just wonder whether --

21 THE COURT: I understand, but do you understand
22 where the Court is because -- I mean, quite honestly,
23 taking no position, the issue is a critical issue to the
24 petitioners/plaintiffs and in an abundance of caution on
25 their behalf they are looking for nothing to happen, slip
26 through, while they're waiting to go to Federal Court and I

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2 understand that. And if you were accurate with respect to
3 what came first, I would have to comply with that, but in
4 light of the fact that this Court's order, which granted
5 the interim stay, preceded the Notice of Removal in
6 compliance with rules and guidelines, the order of this
7 Court stands.

8 MR. COLES: If I may be heard. She can appeal
9 your order, she can move for reconsideration. She can't
10 come in on an e-mail that's not sent to the other side and
11 say vacate it. That's a completely improper, absurd
12 process. The CPLR tells you how you challenge orders.

13 MS. QUINN: I'm sorry, Mr. Coles, if I may. I
14 was not asking for a vacation of the order. I didn't
15 realize that the order had already been issued. I did know
16 that the transcript was so ordered, so I certainly was not
17 seeking to vacate and order without letting you know. I
18 was just informing the Court of --

19 MR. COLES: Okay, I got it. I think the order
20 should stay for all of the reasons we talked about.

21 THE COURT: The order has to stand because it
22 preceded either the Notice of Removal being provided to the
23 Court or the Notice of Removal being provided to the
24 petitioners/plaintiffs or the Notice of Petition being
25 provided to the clerk of the Court. In light of all of
26 that, the order of the Court stands.

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2 MR. COLES: Thank you.

3 THE COURT: That's that.

4 MR. COLES: All right.

5 THE COURT: Mr. Osman?

6 THE CLERK: Yes, Your Honor.

7 THE COURT: I know this is hypertechnical, but
8 sometimes that's what we're dealing with.

9 THE CLERK: Right.

10 THE COURT: And I am going to -- that is all I
11 have to say. The order stands.

12 MR. COLES: Thank you, Your Honor. I'm going to
13 sign off.

14 THE COURT: And I will make sure a hard copy is
15 given to you all as an attachment to an e-mail in
16 accordance with the so ordered transcript so that if you
17 want to go, Ms. Quinn, immediately up to the Appellate
18 Division, you'll have the transcript, which you have to
19 order, and a hard copy, okay?

20 MR. COLES: Thank you, Your Honor.

21 THE CLERK: Your Honor, will you be so ordering
22 this transcript?

23 THE COURT: So ordered. Thank you.

24 Everyone, the best of luck to you all. Stay
25 safe.

26 MR. COLES: Thank you, Your Honor.

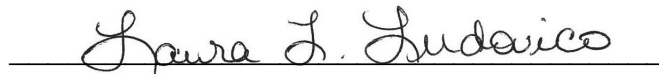
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THE COURT: Most importantly, stay safe and stay health. I'm logging off.

MS. QUINN: You too, Your Honor. Thank you.

* * * * *

I, Laura L. Ludovico, a senior court reporter for the State of New York, do hereby certify that the foregoing is a true and accurate transcription of my original stenographic notes.

A handwritten signature in cursive script that reads "Laura L. Ludovico". The signature is written in black ink and is positioned above a horizontal line.

Laura L. Ludovico
Senior Court Reporter

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